

LAKE COUNTY BOARD of ADJUSTMENT
October 12, 2016
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Steve Rosso, Don Patterson, Frank Mutch, Merle Parise

STAFF PRESENT: Jacob Feistner, Lita Fonda; Wally Congdon

Frank Mutch called the meeting to order at 4:00 pm

PITT VARIANCE—CITY COUNTY (4:00 pm)

Jacob Feistner noted that Suzanne & Jesse Pitt (applicants) were here as well as Luke Jackson, their agent. Jacob presented the staff report. (See attachments to minutes in the Oct. 2016 meeting file for staff report.) Attachment 3 was out of order in the packet. Luke showed a large version of attachment 4.

Jacob confirmed for Steve that the walkway along the shoreline was included in the impervious surface calculation, and that the walkway was still in the planning stages so there'd been no application submitted for it yet. Steve referred to the front setback definition on pg. 9 and asked if the concrete apron in front of the garage doors would be at grade. Jacob said they'd discussed that and determined that it was part of the structure and had to fit within the setback regulations. It was attached to the garage and would be at or above grade since they felt the garage floor would be above grade. The floor would slope from an above-grade elevation to grade. Luke had explained that they would bring the grade up to the surface of the slab to the garage. If that were done, perhaps they could look at it as being at grade and it wouldn't have to meet the setback as they explained it. They came to agreement on that but impervious surface still had to be dealt with, and whether or not denying it created an undue hardship.

Luke Jackson, agent, worked with MMW Architects in Missoula. Jesse Pitt noted Luke was also his son-in-law. Luke remarked this was a tough, tiny lot, at 0.4-acre where the minimum zoning lot size was 1 acre. Lot width was a little over 90 feet as compared to a 100-foot minimum lot width for lakeshore property. He described the cabin and pooling drainage. Rebuilding the cabin in the existing location didn't make sense. The antiquated septic system would need to be replaced. He touched on the shared well. Regarding the side setbacks, they were looking to minimize that to just the north and south property lines with a 6-foot variance request on both of those.

In terms of the discussion on the garage apron, this was the first time he'd worked with an interpretation that the apron outside the garage was a structure. He showed a gravel driveway. The garage apron was concrete for a couple of reasons. One was the road was an extremely muddy. It gave a zone to get rid of some dirt before entering the house, where the cars would park. To protect water quality, it would be where you got spills from vehicles and it gave a chance to clean it up before it got washed into the dirt by the lake. They needed the variance because the property was so small. If the property line

hadn't been relocated in the 1970's, they wouldn't be here for a variance. They were trying to touch the site pretty lightly but were pinned with the small size of the property.

With regards to Deerbrush Lane, Merle verified with the owners that it ended at their property line and that they had the easement. Jesse Pitt said the ownership of the easement was in question. He spoke with Bill Barron who said it was still an easement that ended at their property.

Frank asked for clarification on the slab as part of the structure. If there were a gravel separation between the garage and the slab, it wouldn't be attached. Jacob said as long as there was a separation, it was no longer attached. Jacob noted the Polson Development Code setbacks were the most difficult to interpret of the Lake County zoning districts. Generally a slab was attached to the garage by rebar even if it was done in two pours. Frank disagreed. A driveway could float on its own mat. You had differing expansions and rates of settlement where the garage stayed dry and the slab didn't. If the driveway were tied to the garage, it would crack. Jesse Pitt described where he lived now, where the concrete apron in front of the garage wasn't rebarred into it. The contractor said it would tear into the garage or pad later. They didn't have cracks after 37 years.

Luke said the only place they did this was on ADA entries to make sure it didn't sink or have a gap. The slab with the garage would be loaded differently than the one outside. They would definitely not be pinning those together. The recommendation for not approving the variance for the lot coverage was because the apron was being considered as part of the structure. It was a different interpretation than he'd encountered elsewhere in the state. He understood and appreciated that different jurisdictions interpreted things differently.

Steve didn't think they needed to get into the engineering of the slab and the floor of the garage. A couple of issues existed. The slab required a variance because of the impervious surface. If it was considered part of the structure, they'd be looking at changing the setback on the south side to something like a one-foot setback. Jacob's initial approach to cut the slab back so they wouldn't have to have a one-foot setback and also reducing the impervious surface at the same time was an option. He wanted to open it up to find another option. The slab was considered at grade by most engineering and architectural systems. This was not the only piece of exposed concrete contributing to the impervious surface, given the 5-foot walkway along the lake. It would require another permit and was controversial. It was an issue with the lakeshore protection zone and also the zoning regulations because of the required buffer along the lake. The buffer was recommended and required and the regulations addressed this because when stormwater runoff headed to the lake, it was important to have vegetation next to the lake so the nutrients in the water could be used by the vegetation before the water entered the lake. There, nutrients likely would grow algae and so forth. People who had a poor buffer zone typically had more algae problems. He asked that they consider eliminating the walkway along the lake. That took away roughly 500 square feet of impervious surface. They could trim the parking area, either on both sides or on the south edge. It would still be usable and serve for what they wanted and they could get inside the 20%

impervious surface. He gave an example of trimming the parking area so it still overlapped outside the garage doors but lost about 228 square feet, which combined with eliminating the sidewalk, would bring them under the impervious surface limit and the variance wouldn't be needed. The Board was obligated to approve variances that were the minimum required.

Suzanne P. didn't know that the wooden deck by the lake would be considered an impervious surface. Jesse added it was movable. Suzanne said they didn't want it. It just seemed like too much trouble to move it. They had it when they were building a wooden dock that they didn't finish and didn't want to waste. Luke added it was elevated and sitting on blocks but not permanent. Steve said the applicants could consider that. If the idea was to retain that walkway, one requirement for a walkway in the lakeshore protection regulations was that it had to drain back on the ground rather than into the lake so it would have to tip back away from the lake. If they did the walkway, he recommended pulling it back so it wasn't right next to the wall and they'd have some area to plant a little buffer between the walkway and the breakwater. Benefits of this would include better water quality for the lake and it might make it easier to put in a flat walkway. Jesse checked about a sidewalk that went to the dock. Steve said there could be a narrow walkway that went out to the dock.

Luke said these comments made sense. They showed this because when storms came across the lake, they came over the top of the existing breakwall. The soil behind it kept getting undermined. The point with showing that was to move that water point away from the back edge of the wall so it might be easier to deal with when the waves came over and started breaking that up. Jesse showed where the line of refuse, garbage, weed, sticks, logs and trees formed within 10 to 15 feet of their cabin. The water broke on the breakwater and went over a 35-foot tree. He was concerned about the huge amount of water there. The neighbor had a huge apron which handled the water surge. Steve acknowledged this had been a long, difficult, much-researched issue on how to handle this. Breakwaters had this problem. He described different kind of protection along the shoreline, and effects that breakwaters could have on neighbors. He compared vertical and sloped breakwaters. By also planting a buffer zone that included things other than shallowly rooted grasses, those roots helped hold the ground behind the breakwater. He contrasted examples of the effectiveness of different vegetation choices. If the owners wanted to have the variance for impervious surface, he would like to change the wording so they had the option to reduce whatever other impervious surface they had, not just the apron in front of the garage if that was a high priority and if they could get around the issue with the setback.

Suzanne reported that Delaney's said they couldn't plant within 50 feet of the lake when she investigated replacing some trees. Steve clarified that they had to get it approved. He thought the Planning Dept. had a brochure available with ideas along the lines of recommendations for native plants and things that were good for buffer zones. Jesse said they were all for that. Steve repeated that a change [to the proposal] here might be to put in the flexibility so if they didn't get approval for the impervious surface variance, they could decide which impervious surface they wanted to reduce. Jesse thought that made

sense. He and Suzanne said the sidewalk could go. Jesse said the area immediately behind the breakwall was very well constructed so water would filter through it and so forth. It sank about 2 feet every 3 or 4 years. If they had plants in there, he thought that would stop that. Then they wouldn't need that sidewalk along the breakwater.

Steve noted an issue they might find that still might require a lakeshore permit was that in order to make revegetating that area successful, they were likely to bring in some soil if that had been washed out. Jesse said the breakwater was put in because the lot was being washed away. He thought these were great ideas.

Jacob clarified that in the RRZD (Rural Residential Zoning District) along the lake, a shoreline buffer was required. The lakeshore protection regulations required a permit for any construction activities within 20 feet of the lake, [which included] taking trees out or putting trees in. To install a landscape plan was highly encouraged and required a permit. Today they were looking at two issues: an interpretation issue and the request of two variances. After listening to the discussion and input, he conceded the point that if the soil and landscape was brought to the grade of the apron and wasn't pinned or attached to the garage, they could view that as a separate structure. It would not have to meet a setback but was still included in the impervious coverage calculation. They were only reviewing what was publicly noticed. If they wanted to trade coverage for coverage, they could talk about that but could probably not approve it today.

Luke thought that was a staff recommendation. Couldn't the Board modify a staff recommendation during a public hearing process? It sounded like the applicants were okay with giving up the request of the variance for lot coverage. Jacob replied that if the variance was not approved, the apron was considered as a detached impervious coverage and the applicants traded the walkway and the deck for that, they didn't need a variance. They would deal with it as a zoning conformance permit. Luke checked that if the setback variance was approved and the lot coverage variance was rejected, it was up to them to come back for [zoning conformance]. Jacob outlined some items that would be dealt with through the zoning conformance process rather than the Board process. Jesse offered to show some visuals to explain why they were here. He showed pictures on his smart phone and described how the floor had sunk in the cabin and the walls were cracking. They had an inclined road of about 20% grade. A spring ran spring and fall. Their lot ended up as a pile of muck. The new proposed driveway sat over the back entry of the present cabin. The cars sank into the muck. The apron would keep them afloat. He showed more pictures and gave more description. The water table was about 8 inches below the surface of the grass.

Frank asked if they'd determined if the apron would help or make the situation worse. Jesse thought it would be better. It wouldn't come down into their kitchen. Frank asked about a compacted gravel driveway. They were nice looking and absorbed more water. Jesse agreed. He started the conversation with Jacob about dealing with rainwater. He was confident they could take care of the rainwater from their property without an issue. It came down to how much they were handling from adjacent properties. They might need to do something like a swale for retention. The challenge was the water table was

so high. Territorial Landworks (Missoula) was helping with this. They would do more work and come back to Jacob, depending on today's answers.

Frank wondered if they could approve something like 'impervious surface not to exceed X number of square feet' that they could then design around. The applicants could consider a gravel driveway versus concrete. Jacob replied they already had that. They had a square footage they could develop, based on the 20%. They could develop with what they wanted up to that amount. To have more, they could get rid of some coverage or they could put in a gravel driveway. That would help the neighbors' stormwater infiltrate instead of running towards the house or wherever it would go. They had a defined number to work with. Steve thought they needed to change the findings of fact to eliminate the discussion of the lot coverage in each finding and then not approve the impervious surface request, or it could be withdrawn. Frank said it wasn't on the record. Jacob asked Wally if this could be done.

Luke confirmed for Wally that Territorial Landworks was working on this [project] and that the wall was cement. Wally said they could change the findings of fact. He guessed that Territorial would find they were sitting on the clay lens on which the rest of the lake sat. The water had nowhere to go. It was fenced in with a cement wall that was supposed to hold the lake back. A question [for Territorial] might be what did they really need to do to fix the [water] problem.

Jacob clarified that two notices were publically noticed on which the staff report was based. Could they withdraw a variance and do one? They could separate out the portions of the findings that applied, and they could do so legally. Wally said yes, they could do less but not more.

Luke said they would officially rescind the lot area variance for impervious surface. Jesse confirmed for Frank that the cement wall had a lot of weep holes. Steve said deciding to do a gravel apron to get out of the impervious surface issue might get them the permit but might not solve the water problem. The regulations didn't include gravel surfaces as impervious. Hydrologists would say the difference between the impervious aspect of a gravel driveway versus a concrete or asphalt driveway was small. If there was a problem on the south edge of the property but not the north edge, the applicants might want to point the runoff to the north side where it would drain. They could probably put in something like a swale or other kind of buried stormwater retention device where the water would soak slowly into the ground. The withdrawal of the impervious surface variance request would simplify the Board decision.

Jacob noted he'd crossed off the last sentence in each of the findings on pgs. 16-17.

Steve checked that they'd decided it was okay to not require a setback variance for the slab. Jacob said as part of the zoning conformance, Luke would provide something that said it wouldn't be attached and that it would be at grade. Steve said on the rest of the issues, the applicants made significant improvement on the site planning by minimizing the setback. He thought it was a legitimate amount considering the hardships with the

narrowness and size of the lot. They'd gone from a few feet to 24 feet. They'd balanced it on each side. The setback variance at 24 feet made sense. Merle said it was well-drawn, architecturally and engineering-wise, locating the house and the garage.

Steve pointed to another interpretation problem on attachment 4. The buildable area was drawn on, and they were outside of it. He wondered if the [setback] curve on the east side of the breakwall would clip the house corner, and if condition #4 needed an adjustment. Jacob replied they couldn't approve a setback variance without notice. They'd have to make sure it was outside of the 50 feet or come back with a variance for 47 feet. Luke and Steve clarified and continued this discussion using the map. Steve asked about drainfield setbacks and Jacob described that one existed. Steve said if they could move the building back a few feet, the corner might not be an issue. They would have to balance that [with the drainfield setback].

Steve asked if something talked about a slab setback in the conditions. Jacob replied no. Frank verified with Jacob that he would change the findings. Steve noted they didn't have to change the conditions.

Public comment opened: None offered. No public present. *Public comment closed.*

Motion made by Frank Mutch, and seconded by Don Patterson, to approve the setback variance with the findings of fact as modified and conditions. (The second variance had been withdrawn.) Motion carried, all in favor.

Merle complimented Steve's work.

MINUTES (5:10 pm)

Corrections for the minutes of 3/9/16 were offered from Steve and Frank. On pg. 13 in the 3rd paragraph, 'in Bigfork' changed to 'elsewhere' in the second line, and 'on the RV' changed to 'in the RV park' in the 6th line. On pg. 9 in the last paragraph, 'ended' changed to 'could end' in the second line and in the 7th line, 'and are' were added prior to 'covered'. On pg. 8 in the 3rd line of the 4th paragraph, 'were' was changed to 'was'. Frank asked about the rewriting of the report for the changes given by the Board. Lita explained she might note changes on her copy of the report, which was filed with the meeting file in the office. She didn't formally rewrite the report. A planner would rewrite the appropriate items. Frank asked how someone would find out what was decided. Lita said they could come in to the office for that.

Motion made by Merle Parise, and seconded by Frank Mutch, to approve the March 9, 2016 meeting minutes as amended. Motion carried, all in favor.

OTHER BUSINESS (5:15 pm)

The group discussed updating the Board bylaws.

Frank Mutch, acting chair, adjourned the meeting at 5:25 pm.